licensee's employees negligently damaged the plaintiff. *Held*, that the licensor is liable. *Sorenson* v. *Chicago, R. I. & P. Ry. Co.*, 168 N. W. 313 (Iowa).

Where there is no statutory authorization, the lessor of a railroad is generally held for the liability of the lessee in operating the road. *Hays* v. *Railroad*, 20 C. C. A. 52, 74 Fed. 279. If there is such authorization, some courts hold that this carries with it exemption by necessary implication. *Hahs* v. *Cape Girardeau & C. R. Co.*, 126 S. W. 525 (Mo.); *Vadas* v. *Pittsburg M. & Y. R. Co.*, 203 Pa. 41, 79 Atl. 166. See 20 HARV. L. REV. 334. However, it would seem that mere permission to do acts which otherwise might be illegal does not absolve the lessor by necessary implication. *Clinger's Adm'x* v. *Chesapeake & O. Ry. Co.*, 33 Ky. Law R. 86, 109 S. W. 315. In the principal case it was a license to use the tracks. In such a case the licensor has, in absence of statutory authorization, been held liable. *Jefferson* v. *Chicago & N. W. Ry. Co.*, 117 Wis. 549, 94 N. W. 289; *Pennsylvania Co.* v. *Ellett*, 132 Ill. 654, 24 N. E. 559; *Chicago & E. R. Co.* v. *Meech*, 163 Ill. 305, 45 N. E. 290. If there is statutory authority some courts might make a distinction between a lease and a license of joint user. See 1 ELLIOTT, RAILROADS, 2 ed., § 477. It is submitted, however, that the principal case rests the lessor's or licensor's liability on its true basis. The franchise has imposed duties upon the railway, the occupier of the premises, to operate its road carefully. The railway may carry them out through lessees or licensees, but it must see to it that no one is injured by any breach of duty or negligent use, unless a statute expressly exempts it from liability. *Braslin* v. *Somerville Horse R. Co.*, 145 Mass. 64, 13 N. E. 65; *Chicago & Grand Trunk Ry. Co.* v. *Hart*, 209 Ill. 414; 70 N. E. 654; *Clinger's Adm'x* v. *Chesapeake & O. Ry. Co.*, *supra*. But see 20 HARV. L. REV. 334. An analogy is found where the occupier of premises is held liable for the negligence of an independent contractor where he is charged with a "non-delegable duty." *Doll & Sons* v. *Ribetti*, 121 C. C. A. 621, 203 Fed. 593; *Strickland* v. *Montgomery Lumber Co.*, 171 N. C. 755, 88 S. E. 340; *Covington & Cincinnati Bridge Co.* v. *Steinbrock*, 61 Ohio St. 215, 55 N. E. 618.

RELIGIOUS SOCIETIES — JURISDICTION OF COURTS — PROPERTY RIGHTS. — The constitution of a religious society provided that in case of a schism those adhering to the doctrines of the Lutheran Synod of Missouri should hold the property. The defendants, being a majority of the society, formed a separate organization affiliated with the Lutheran Synod of Iowa, certain essential doctrines of which are repudiated by the Missouri Synod. On demurrer to these facts the right of the defendants to the church property turned on whether it was necessary for some ecclesiastical authority first to determine the doctrinal question involved. *Held*, that the demurrer be sustained. *Bendewald* v. *Ley*, 168 N. W. 693 (N. D.).

Although civil courts in this country will not interfere in purely ecclesiastical matters they will take jurisdiction to determine controverted claims to church property. *Hendrickson* v. *Decow*, 1 N. J. Eq. 577; *Rottman* v. *Bartling*, 22 Neb. 375, 35 N. W. 126; *Fussell* v. *Hail*, 233 Ill. 73, 84 N. E. 42. Accordingly, where such controversy arises out of a division in a religious society, civil courts will ascertain which of the rival factions continues the original organization and will award it the property. *Hayes* v. *Manning*, 263 Mo. 1, 172 S. W. 897; *Mack* v. *Kime*, 129 Ga. 1, 58 S. E. 184; *Horsman* v. *Allen*, 129 Cal. 131, 61 Pac. 796. In a congregational society, where majority rule prevails, the church property is usually given to the numerical majority of the members. *Bouldin* v. *Alexander*, 15 Wall. 131; *Fernstler* v. *Seibert*, 114 Pa. 196, 6 Atl. 165; *Gipson* v. *Morris*, 31 Tex. Civ. App. 645, 73 S. W. 85. But if the society belongs to an ecclesiastical system, the decision of the highest church judicatory on doctrinal matters is generally accepted as conclusive by the civil courts. *Watson* v. *Jones*, 13 Wall. 679; *Presbyterian Church* v. *Cumberland Church*, 245 Ill. 74,

91 N. E. 761; *Sanders* v. *Baggerly*, 96 Ark. 117, 131 S. W. 49. *Contra, Landrith* v. *Hudgins*, 121 Tenn. 556, 120 S. W. 783. The principal case is one of the latter class. The complaint clearly alleged a repudiation by the Missouri Synod of certain essential doctrines of the Iowa Synod with which the defendants had become affiliated. Since this fact was admitted by the demurrer it seems that there was no theological question for the court to decide, and that the demurrer was improperly sustained.

TAXATION — STATE INCOME TAX — VALIDITY OF STATUTE. — An Oklahoma statute provides for an income tax on residents, and imposes a like tax on incomes earned by nonresidents on property or businesses within the state. A resident of Chicago, who had large oil holdings in Oklahoma, asks for a temporary injunction restraining the collection of the tax. *Held*, that the tax is valid. *Shaffer* v. *Howard*, 250 Fed. 873 (District Court, E. D. Oklahoma).

For a discussion of this case, see NOTES, page 168.

TRUSTS — POWERS AND OBLIGATIONS OF TRUSTEES — MANDATORY PROVISIONS AS TO INVESTMENTS. — The settlor of a trust directed the trustees to invest in railway bonds bearing at least 4 % interest. A loss was occasioned by investments in 4½ % New York City Bonds and 3½ % Liberty Bonds of the first issue. *Held*, trustees liable for loss occasioned by investments in 4½ % New York City Bonds, but not for the loss occasioned by the investment in Liberty Bonds. *In re Loudon's Estate*, 171 N. Y. Supp. 981 (Surrogate Ct.).

As a general principle trustees are bound to do whatever the creator of a trust directs them to do, unless the beneficiaries, being *sui juris*, excuse them from so doing. *Denike* v. *Harris*, 84 N. Y. 89; *Womack* v. *Austin*, 1 S. C. 421; *Handley's Estate*, 253 Pa. St. 119, 97 Atl. 1040; *Robinson* v. *Robinson*, 11 Beav. 371. But where it is impossible to carry out directions, or where the interests of the beneficiaries absolutely require a change, mandatory provisions may be disregarded. *McIntire* v. *Zanesville*, 17 Ohio St. 352. See *Citizens National Bank* v. *Jefferson*, 88 Ky. 651, 11 S. W. 767. That there was nothing in the principal case to justify a disregard of mandatory provisions is shown by the court in holding the trustees liable for the investment in 4½ % New York City Bonds. It is conceivable that a situation may arise where investments in war bonds would be made by a prudent man to protect his other property, in which case it is submitted, a like investment by trustees in disregard of directions, would be justified. But again no such crisis presented itself in the principal case. In not holding the trustees liable for the loss occasioned by the investment in 3½ % Liberty Bonds, the court sanctioned a patriotic motive of the trustees, at the expense of the beneficiary and without his consent.

UNFAIR COMPETITION — BY MEANS UNLAWFUL AS AGAINST THIRD PERSONS — UNNECESSARY IMITATION OF WARES HAVING SECONDARY MEANING — BURDEN OF PROOF. — The defendant was selling Shredded Wheat Biscuits that were exact imitations of the plaintiff's product. The biscuits had acquired a secondary meaning, in that the consumer considered them to be produced by a single maker, to whose manufacture was ascribed part of the value. Since, in several places, the biscuits were sold unpacked with no distinguishing marks, it was claimed the public was being misled. But a change in the form, size, or color of the products was impracticable. It was doubtful whether some letter or symbol could be impressed on the biscuit or whether a band or tag could be attached which would designate the manufacturer without involving too great expense. *Held*, that the defendant be enjoined, but if in six months he shows that all possible distinguishing marks are impracticable, the injunction should be dissolved. *Shredded Wheat Co.* v. *Humphrey Cornell Co.*, 250 Fed. 960 (C. C. A.).